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14 **UNITED STATES DISTRICT COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 ROBERT BRANCH,

17 Plaintiff,

18 vs.

19 COUNTY OF SAN DIEGO, PAUL
20 WARD, an individual,
21 BILL GORE, an individual.

22 Defendants.

23 **CASE NO. '15CV2336 AJB KSC**

24 **COMPLAINT FOR:**

- 25 1. VIOLATION OF 42 U.S.C. § 1983
26 (EXCESSIVE FORCE)
- 27 2. VIOLATION OF 42 U.S.C. § 1983
28 (RETALIATION)
- 29 3. BATTERY BY PEACE OFFICER
- 30 4. FAILURE TO PROPERLY TRAIN
- 31 5. *MONELL LIABILITY -*
32 *RATIFICATION*
- 33 6. VIOLATION OF CALIFORNIA
34 CIVIL CODE § 52.1
- 35 7. INTENTIONAL INFILCTION OF
36 EMOTIONAL DISTRESS
- 37 8. NEGLIGENCE

38 **JURY TRIAL DEMANDED**

39 **GENERAL ALLEGATIONS**

40 1. Jurisdiction is proper in the United States District Court for the Southern
41 District of California pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1343(3) and (4),
42 et. seq.

43 2. This Court has supplemental jurisdiction over the pendent state law
44 claims under 28 U.S.C. §1367(a).

45 3. Venue is proper in the Southern District of California because the acts

1 or omissions which form the basis of the Plaintiff's claims occurred in San Diego,
2 California, within the Southern District.

3 4. Plaintiff has complied with Government Code §§ 810 et seq.

4 **PARTIES**

5 5. At all times relevant to this complaint, Plaintiff was an individual
6 residing in San Diego County, California.

7 6. At all times relevant to this complaint, Defendant Paul Ward (Ward) was
8 an individual believed to reside in San Diego County, California and was acting under
9 color of law in his position as a Deputy Sheriff employed by the San Diego County
10 Sheriff's Department.

11 7. Defendant County of San Diego is a public entity, a county in the State
12 of California.

13 8. Defendant Bill Gore is the Sheriff of San Diego County and is a policy
14 maker.

15 **FACTS**

16 9. On the afternoon of May 5, 2015 Robert Branch was driving his vehicle
17 westbound on the access ramp to Interstate 8 near 2nd Street in El Cajon, California.
18 As he transitioned on to Interstate 8, Branch began to move to the left lane to pass the
19 slower moving vehicle ahead of him, a Ford sedan.

20 10. In a fit of road rage, the Ford accelerated and jerked left into Branch's
21 lane of travel, forcing Branch onto the left shoulder of Interstate 8. Branch accelerated
22 and was able to get back onto the roadway.

23 11. Branch continued westbound on Interstate 8 for approximately nine miles
24 and did not see the Ford during that time. He exited onto College Avenue in San
25 Diego to investigate rattling he heard in his trunk, and parked his vehicle on a side
26 street.

27 12. Unbeknownst to Branch, the Ford had been following him and was being
28 driven by Detective Paul Ward of the San Diego Sheriff's Department. As Branch

1 exited his vehicle and began to walk back to his trunk area he saw the Ford drive past
 2 him in the opposite direction, with Ward driving and smiling at him.

3 13. Branch opened his trunk and secured the loose objects, and heard a car
 4 park behind him. After closing the trunk, Branch began to walk back to the driver's
 5 compartment of his vehicle and turned around to see Ward approaching.

6 14. Ward, dressed in plain civilian clothes, walked toward Branch, pulling
 7 a wallet from his left rear pocket. Ward opened the wallet and flashed a badge at
 8 Branch, said "San Diego Sheriff's Department" to Ward and demanded Branch's
 9 license and registration.

10 15. Branch was uncertain whether Ward was a law enforcement officer
 11 because he saw no lights or identifying markings on the Ford, Ward showed no
 12 picture identification, displayed no radio, handcuffs or gun to indicate Ward had any
 13 authority to initiate a traffic stop. Branch was concerned for his safety.

14 16. Branch told Ward that he would not give him his license or registration
 15 because Ward was not on duty. Ward asked Branch if he knew he could go to jail for
 16 reckless driving and again demanded his license and registration. Branch asked Ward
 17 if Ward had called the police.

18 17. Still uncertain if Ward was a law enforcement officer, Branch agreed that
 19 he would give Ward his license but that he was going to video record Ward, because
 20 Branch was in fear for his safety. Branch sat in the driver's seat of his vehicle and
 21 produced his license and retrieved his phone. Branch asked Ward if he knew "what
 22 was going on in the world, in Baltimore and Ferguson."

23 18. Ward ordered Branch out of his vehicle. Branch complied and began to
 24 video record the encounter. Ward told Branch he was being detained, pushed his chest
 25 against Branch and grabbed Branch on the chest and back. Branch told Ward he could
 26 not touch him and again asked Ward to call the police.

27 19. Ward then threw his arm around Branch's neck, with Ward's forearm
 28 directly across Branch's throat and trachea, cutting off Branch's airflow, choking him.

1 Ward then finally asked a witness to call the police.

2 20. Ward took Branch to the ground and continued to choke Branch and
3 restrain him by his neck for several more minutes.

4 21. Other law enforcement officers arrived and Branch was arrested for
5 violating California Penal Code § 69, resisting an executive officer using force or
6 violence; in this case it was felony "contempt of cop."

7 22. On or about June 17, 2014, nearly a year before Ward's assault on
8 Branch, another San Diego County Sheriff's Department detective working in the
9 same unit as Ward complained to Ward's supervising lieutenant and to the Sheriff's
10 Department's Internal Affairs division that Ward had committed a battery against
11 him. The complaining detective reported that Ward's actions had become
12 "increasingly erratic and that [Ward's] hostile behavior is progressing." The
13 complaining detective told the Internal Affairs division that he believed Ward to be
14 a "loose cannon" and that Ward was going to hurt somebody.

15 **FIRST CAUSE OF ACTION**

16 (Civil Rights Action (42 U.S.C. § 1983)- Excessive Force - Against Defendant
17 Ward)

18 23. Plaintiff realleges all prior paragraphs of this complaint and incorporates
19 the same by reference.

20 24. 42 U.S.C. § 1983 provides in part:

21 Every person who, under color of any statute, ordinance,
22 regulation, custom, or usage of any State or Territory subjects, or
23 causes to be subjected, any person of the United States or other
24 person within the jurisdiction thereof to the deprivation of any
rights, privileges, or immunities secured by the Constitution and
laws shall be liable to the party injured in an action at law, suit at
equity or other proper proceeding for redress.

25 25. Plaintiff had a firmly established right under the Fourth Amendment to
26 be free from official infliction of physical abuse, assault, battery, and intentional
27 infliction of emotional distress.

28 26. Plaintiff had a firmly established right to be free from excessive force

1 being used against him.

2 27. On May 5, 2015 Plaintiff posed no threat to Ward or anyone else when
3 Ward used excessive force.

4 28. The use of force in grabbing Plaintiff and choking him with the forearm
5 was unnecessary and excessive.

6 29. The use of force by continuing to use a neck restraint on Plaintiff for
7 several minutes was unnecessary and excessive.

8 30. Defendant acted under color of state law in violating Plaintiffs' rights.

9 31. Defendant was acting in purported compliance with a policy promulgated
10 by the San Diego County Sheriffs Department, in using respiratory neck restraints
11 against citizens who had broken no law or committed minor offenses.

12 32. During the relevant period, defendants were acting under color and
13 pretense of law, to wit: under color of the statutes, ordinances, regulations, customs
14 and usages of the State of California and the County of San Diego.

15 33. Defendant, acting under the color of statute, ordinances, regulations,
16 customs and usages of the State, knew that use of force in these circumstances was
17 illegal under clearly established law.

18 34. The conduct alleged herein caused Plaintiff to be deprived of his civil
19 rights that are protected under the United States Constitution which has also legally,
20 proximately, foreseeably and actually caused Plaintiffs to suffer physical injury,
21 emotional distress, pain and suffering, and further damages according to proof at the
22 time of trial.

23 35. The conduct alleged herein was done in deliberate or reckless disregard
24 of and Plaintiff's constitutionally protected rights; justifying the award of exemplary
25 damages against Defendants in an amount according to proof at the time of trial in
26 order to deter the Defendant from engaging in similar conduct and to make an
27 example by way of monetary punishment.

28 36. Plaintiff is also entitled to attorney fees and costs of suit herein.

SECOND CAUSE OF ACTION

SECOND CAUSE OF ACTION
(Violation of 42 U.S.C. § 1983 - Retaliation - Against Defendant Ward)

37. Plaintiff realleges all prior paragraphs of this complaint and incorporates the same by reference.

38. Plaintiff had a First Amendment right to record the police for engaging in what he perceived to be a violation of his rights.

39. Defendant Ward did not want a citizen recording or making public his unconstitutional acts.

40. Plaintiff had a Constitutional right as a citizen to petition the government for a redress of grievances.

41. Plaintiff exercised his right under the First Amendment to ask for a uniformed, on-duty police officer to come to the scene after Ward demanded his license and registration and detained him.

42. Ward used force on the Plaintiff and arrested him as retaliation because Plaintiff recorded him.

43. Ward used force on the Plaintiff and arrested him because Plaintiff asked for a uniformed, on-duty police officer to come to the scene.

44. As a result of Ward's actions, Plaintiff suffered damages in the amount to be proven at trial.

THIRD CAUSE OF ACTION

(Battery By Peace Officer - Against Defendants Ward and County of San Diego)

45. Plaintiff realleges all prior paragraphs of this complaint and incorporates the same by reference.

46. Plaintiff was not attempting to escape, was not resisting and was not in any way interfering with any legal duty Ward may have had.

47. Ward intentionally wrapped his arm around Plaintiff's neck and applied force with his forearm to Plaintiff's throat and trachea.

48. The use of force by Ward in grabbing Plaintiff and choking him with the

1 forearm was unnecessary and excessive.

2 49. Plaintiff did not consent to any touching by Ward.

3 50. Plaintiff was harmed by Ward's touching.

4 51. Ward's use of unreasonable force was a substantial factor in causing the
5 harm to Plaintiff.

6 52. The conduct of Defendant Ward also amounts to oppression, fraud or
7 malice and punitive damages should be assessed against Defendant Ward for the
8 purpose of punishment and for the sake of example.

9 53. Defendant County of San Diego is vicariously liable under Government
10 Code § 815.2(a) for the acts and omissions of Ward during the course and scope of his
11 employment.

12 **FOURTH CAUSE OF ACTION**

13 (Failure To Properly Train - Against Defendant County of San Diego)

14 54. Plaintiff realleges all prior paragraphs of this complaint and incorporates
15 the same by reference.

16 55. Ward used unnecessary and excessive force by applying a dangerous
17 neck restraint on Plaintiff.

18 56. Ward had received inadequate training in the use of force and the use of
19 neck restraints.

20 57. The training policies of the San Diego Sheriff's Department were not
21 adequate to train its deputies to handle the usual an recurring situations in which they
22 must deal.

23 58. The unit of the San Diego County Sheriff's Department that Ward
24 worked in did not have a training or re-training program.

25 59. Defendant County of San Diego was deliberately indifferent to the
26 obvious consequences of its failure to train its deputies adequately.

27 60. The failure of the defendant County of San Diego to provide adequate
28 training caused the deprivation of Plaintiff's rights by Ward.

61. The failure of the defendant County of San Diego to provide adequate training is so closely related to the deprivation of Plaintiff's rights as to be the moving force that caused Plaintiff's damages.

FIFTH CAUSE OF ACTION

MONELL LIABILITY - RATIFICATION - AGAINST DEFENDANTS COUNTY OF SAN DIEGO AND BILL GORE

62. Plaintiff realleges all prior paragraphs of this complaint and incorporates the same by reference.

63. On or about May 13, 2015, the public affairs director for the San Diego Sheriff's Department, Jan Caldwell, stated that Ward followed department policy in using force and a neck restraint on Plaintiff.

64. Caldwell acknowledged that neck restraints that restrict air flow are very dangerous and are not permitted by the San Diego County Sheriff's Department.

65. Caldwell acknowledged that the department had viewed a video of the use of force by Ward on Plaintiff.

66. Defendant Bill Gore had final policy making authority for the defendant County of San Diego concerning the acts of Ward.

67. Defendant Bill Gore knew of and specifically approved of Ward's acts, thereby ratifying Ward's acts against Plaintiff and the basis for them.

SIXTH CAUSE OF ACTION

SIXTH CAUSE OF ACTION
(Violation of California Civil Code Section 52.1 - Against Defendants Ward and
County of San Diego)

68. Plaintiff realleges all prior paragraphs of this complaint and incorporates the same by reference.

69. Plaintiff had a firmly established right to be free from excessive force under the Fourth Amendment through the Fourteenth Amendment to the United States Constitution and the equivalent provisions of the California Constitution. Plaintiff also had a firmly established right to video record Defendant under the First Amendment to the United States Constitution.

1 70. The California Legislature has declared that it violates our state civil
2 rights act for any person to interfere with the exercise or enjoyment by any individual
3 of his rights secured by the United States Constitution or state or federal law. This
4 includes any interference of these rights by threats, intimidation, coercion or attempted
5 threats, intimidation or coercion.

6 71. The Defendants interfered with Plaintiff's rights under the First and
7 Fourth Amendment of the United States Constitution and the equivalent provisions
8 of the state Constitution by the use of force and violence as alleged above.

9 72. This interference with Plaintiff's rights was perpetrated by the
10 Defendants in violation of California Civil Code § 52.1 and their right under the
11 Fourth and Fourteenth Amendments to be free from excessive force and under the
12 First Amendment and the Fourteenth Amendment to the United States Constitution
13 and the California Constitution.

14 73. Due to the violation of Plaintiff's rights by all Defendants, Plaintiffs
15 suffered economic damages and non-economic damages, including, but not limited
16 to, emotional distress, pain and suffering, medical expenses and fear caused by the
17 acts complained of herein according to proof at the time of trial.

18 74. Plaintiff is also entitled to the statutory civil penalties set forth in Civil
19 Code § 52.1, attorneys' fees and costs of suit incurred herein.

20 75. The conduct of Defendants also amounts to oppression, fraud or malice
21 within the meaning of Civil Code § 3294 et seq. and punitive damages should be
22 assessed against each non-public entity defendant for the purpose of punishment and
23 for the sake of example. Defendant County of San Diego is liable for the acts of its
24 officers as they have agreed with and or ratified the acts.

SEVENTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress - Against Defendants County of San Diego and Ward)

76. Plaintiff realleges all prior paragraphs of this complaint and incorporates
the same by reference.

1 77. By engaging in the acts alleged herein, Ward engaged in outrageous
2 conduct with an intent to or a reckless disregard of the probability of causing Plaintiff
3 to suffer emotional distress.

4 78. As a direct, proximate and foreseeable result, Plaintiff suffered severe
5 emotional distress and the outrageous conduct was the cause of the emotional distress
6 suffered by Plaintiff.

7 79. The conduct of Defendant Ward also amounts to oppression, fraud or
8 malice and punitive damages should be assessed against Defendant Ward for the
9 purpose of punishment and for the sake of example.

10 80. Defendant County of San Diego is vicariously liable under Government
11 Code § 815.2(a) for the acts and omissions of Ward during the course and scope of his
12 employment.

EIGHTH CAUSE OF ACTION

14 81. Plaintiff realleges all prior paragraphs of this complaint and incorporates
15 the same by reference.

16 82. Defendants owed a duty of care to members of the public to act
17 reasonably and abide by the law, and had a duty to use reasonably in training its
18 deputies, including but not limited to Ward, to avoid foreseeable injury and damages
19 to members of the public, such as Plaintiff. Further, Ward had a duty to act with
20 ordinary care and prudence so as not to cause harm or injury to another.

21 83. Ward breached this duty by failing to use the ordinary care and skill in
22 the scope of his employment as a law enforcement officer when he violently attacked
23 Plaintiff and placed him in a neck restraint.

24 84. Defendant County of San Diego, through the Sheriff's department,
25 breached its duty to use reasonable care in the training of its deputies, including, but
26 not limited to Ward.

85. As a direct and proximate cause of Defendants' actions, Plaintiff has been

1 || damaged in an amount according to proof at trial.

2 86. Defendant County of San Diego is vicariously liable under Government
3 Code § 815.2(a) for the acts and omissions of Ward during the course and scope of his
4 employment.

PRAAYER FOR RELIEF

6 WHEREFORE, Plaintiff asks for judgment against Defendants as follows:

7 1. Compensatory general and special damages in an amount in accordance
8 to proof;

9 2. Punitive and treble damages in an amount according to proof;

10 3. Awarding reasonable attorney's fees, expenses, and costs of suit;

4. Pre-judgment interest;

12 5. Directing Defendants to set forth policies and procedures as may be
13 necessary and proper with respect to the use of force and the use of neck restraints.

14 6. Granting such other and further relief as the Court deems proper.

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18 || Dated: October 16, 2013

The Gilleon Law Firm Law Office of Steve Hoffman

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s/Steve Hoffman
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